



BellSouth Telecommunications, Inc.

601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers

General Counsel/Kentucky

502 582 8219

Fax 502 582 1573

September 23, 2004

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PUBLIC SERVICE
COMMISSION

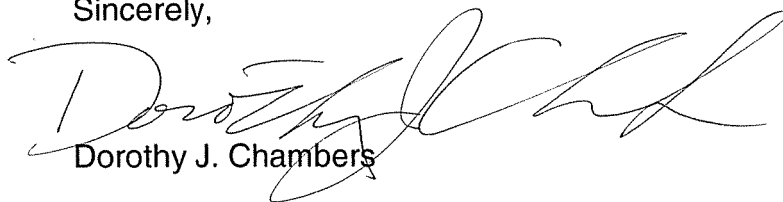
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Approval of the Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. and SouthEast Telephone, Inc., Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996
Case No. 2001-00045

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to SouthEast Telephone's Motion to Hold in Abeyance.

Sincerely,



Dorothy J. Chambers

Enclosure

cc: Parties of Record

551258

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE INTERCONNECTION)	
AGREEMENT NEGOTIATED BY BELL SOUTH)	
TELECOMMUNICATIONS, INC. AND)	CASE NO.
SOUTHEAST TELEPHONE, INC., PURSUANT)	2001-00045
TO SECTIONS 251 AND 252 OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

**BELL SOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO SOUTHEAST
TELEPHONE'S MOTION TO HOLD IN ABEYANCE**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby files its response to the Motion to Hold in Abeyance ("*Motion*") filed by SouthEast Telephone, Inc. ("SouthEast") on September 14, 2004.¹

In its *Motion*, SouthEast requests the Kentucky Public Service Commission ("Commission") to "hold in abeyance the October 8, 2004, deadline for renegotiation of the existing interconnection agreement between SouthEast and BellSouth".² As explained below, to the extent the *Motion* seeks an extension of the expiration date of the parties' interconnection agreement ("SouthEast ICA"), the Commission should deny the *Motion* as there is no need for the Commission to rule on a matter that it addressed plainly in the SouthEast ICA.

¹SouthEast's filing relates to a long-since closed docket in which no current proceeding is open or pending before this Commission. SouthEast has an unrelated adoption request (Case No. 2004-00235), pending before this Commission. This Commission should not allow SouthEast to confuse this Motion and SouthEast's adoption request. BellSouth further notes there is nothing in the FCC's *Interim Rules Order* that warrants any further delay in ruling that SouthEast's adoption request is impermissible. See Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179, (rel. August 20, 2004) ("*Interim Rules Order*"). Under either the eliminated pick-and-choose rule or the current all-or-nothing rule, SouthEast's adoption request is impermissible. Nothing in the *Interim Rules Order* dictates a different outcome or remotely suggests that it would be prudent to delay denial of SouthEast's adoption request.

² *Motion* at p. 1.

**SOUTHEAST’S REQUEST TO EXTEND THE EXPIRATION DATE OF THE
PARTIES’ INTERCONNECTION AGREEMENT SHOULD BE DENIED.**

Citing the *Interim Rules Order*, SouthEast opines, without any explanation, “that a mutually beneficial interconnection agreement cannot be reached by the parties by the October 8, 2004, deadline.”³ This conclusory statement belies the language of the *Interim Rules Order*, ignores the relevant terms of the SouthEast ICA, and reflects an effort to improperly avoid the negotiation process envisioned by the FCC. As an initial matter, the *Interim Rules Order* maintains the regulatory *status quo* with respect to certain elements by imposing on BellSouth the obligation to continue providing SouthEast with access to elements vacated by the D.C. Circuit in *USTA II*⁴ under the same rates, terms, and conditions that applied under SouthEast’s interconnection agreement as of June 15, 2004.⁵ While maintaining the *status quo* for certain elements, the FCC recognized and encouraged parties to enter into voluntarily negotiated agreements during the interim period.⁶ Further, during the interim period, the FCC made clear that the “implementation and propagation of the vacated rules” is foreclosed⁷, and that the expansion of unbundling beyond that which was in place on June 15, 2004, is inappropriate and

³ *Motion* at pp. 1-2.

⁴ *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir 2004) (“*USTA II*”).

⁵ *Interim Rules Order* at ¶¶ 1 and 16.

⁶ *Id.* at ¶ 21 (defining the “interim period” as the period between the effective date of the *Interim Rules Order* [September 13, 2004] and the earlier of: (1) six months following the effective date of such order; or (2) the effective date of the FCC’s permanent unbundling rules); and fn. 58 (supporting voluntarily negotiated interconnection agreements).

⁷ *Id.* at ¶ 23.

impermissible.⁸ Finally, the interim rules apply to any interconnection agreement that expired after June 15, 2004, but has since converted into a month-to-month agreement.⁹

The SouthEast ICA expires on October 8, 2004. Currently, it is the time for parties to be negotiating a new interconnection agreement. Upon expiration of the SouthEast ICA, the SouthEast ICA will convert to a month-to-month contract under which the parties will continue to operate until the parties execute a subsequent agreement; provided, however, that either party may terminate the month-to-month agreement by providing the other party with sixty (60) days written notice.¹⁰ BellSouth will continue to abide by the *Interim Rules Order* and thus continue to provide SouthEast with access to vacated elements during the interim period in accordance with the FCC's interim rules. The FCC's clear intent is for CLECs and ILECs to continue contract negotiations. SouthEast inappropriately is seeking for this Commission to halt the negotiations process and ignore the parties' existing agreement, which was reviewed and approved by the Commission. SouthEast's efforts to "end run" the process envisioned by the FCC for contract negotiations, and the process to which SouthEast expressly agreed in its interconnection agreement, by an inappropriate "abeyance" of that process should be denied.

⁸ *Id.* at ¶¶ 22 (holding that CLECs "may not opt into the contract provision "frozen" in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the status quo in certain respects without expanding unbundling beyond that which was in place on June 15, 2004.").

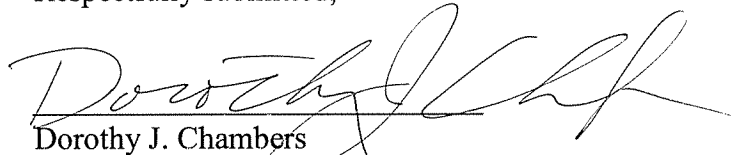
⁹ *Id.* at fn. 57 ("For purposes of evaluating carriers' obligations under this interim regime, we do not draw distinctions between obligations resulting from an interconnection agreement that was in effect on June 15, 2004 and obligations that were set forth in an expired agreement but that nevertheless still applied on June 15, 2004 (as a result, for example, of a contractual provision rendering the agreement's provisions enforceable after expiration in the absence of some other event, such as the execution of a new agreement)").

¹⁰ SouthEast ICA, General Terms and Conditions, Section 2.3.1.

CONCLUSION

There is nothing contained in the FCC's interim rules that should prompt this Commission to issue any ruling that changes the express terms of the parties' interconnection agreement approved by this Commission. Nor should this Commission stay or put in "limbo" the vacated elements between BellSouth and SouthEast. Given the terms of the SouthEast ICA regarding term (and termination) and the fact that the SouthEast ICA *has not expired*, SouthEast's *Motion* is both unnecessary and inappropriate.¹¹ For the reasons set forth herein, the Commission should deny SouthEast's *Motion*.

Respectfully submitted,



Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Tel. (502) 582-8219
Fax (502) 582-1573

R. Douglas Lackey
Robert A. Culpepper
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375
Tel. (404) 335-0841

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

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¹¹ As noted earlier in footnote 1, the FCC's interim rules are totally irrelevant to SouthEast's request, in a separate proceeding, to adopt a provision of the Cinergy interconnection agreement. There is no reason for the Commission to delay, in Case No. 2004-00235, its order denying SouthEast's unsupportable request to adopt a portion of another agreement.

CERTIFICATE OF SERVICE

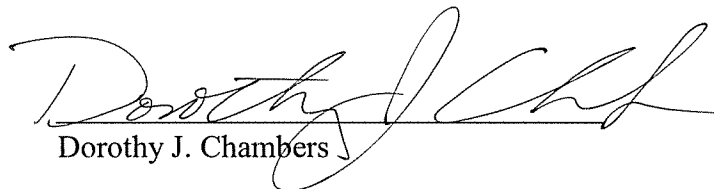
It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 23rd day of September, 2004.

Hon. Jonathon N. Amlung
Attorney at Law
1000 Republic Building
429 W. Muhammad Ali Boulevard
Louisville, KY 40202

Darrell Maynard
SouthEast Telephone, Inc.
106 Power Drive
P.O. Box 1001
Pikeville, KY 41502-1001

Honorable Glenn Acree
Acree Law Office
P. O. Box 25787
Lexington, KY 40524-5787

Honorable David L. Sieradzki
Honorable Gina Spade
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004


Dorothy J. Chambers